

STATE OF MICHIGAN
COURT OF APPEALS

In re JASMINE MICHELLE BROWN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

SONYA COTTON,

Respondent-Appellant.

UNPUBLISHED

March 18, 2004

No. 249117

Washtenaw Circuit Court

Family Division

LC No. 02-000104-NA

Before: Griffin, P.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order exercising jurisdiction over the minor child pursuant to MCL 712A.2(b)(1). We affirm.

Respondent argues on appeal that the trial court erred when it held that a rebuttable presumption existed that the child was within the court's jurisdiction. Respondent also maintains that the evidence is insufficient to warrant the court's exercise of jurisdiction over the child. We disagree.

This Court reviews factual findings with respect to termination of parental rights under the clearly erroneous standard. *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). These factual findings can include whether a child is subject to a substantial risk of harm to his or her mental well-being sufficient to invoke the court's jurisdiction over the child. *Id.* at 315. Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Hill*, 221 Mich App 683, 692; 562 NW2d 254 (1997).

Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional. The adjudicative phase determines whether the probate court may exercise jurisdiction over the child. If the court acquires jurisdiction, the dispositional phase determines what action, if any, will be taken on behalf of the child. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). Probate court jurisdiction over termination proceedings is derived solely from statutes and the constitution. *In re S R*, *supra* at 313, citing *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). MCL 712A.2 provides in pertinent part:

The court has the following authority and jurisdiction:

(b) Jurisdiction in proceedings concerning any juvenile under 18 years of age found within the country:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

To acquire jurisdiction the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2. *Brock, supra* at 108-109, citing MCR 5.972(C)(1).

Here, the trial court concluded that it had jurisdiction over the minor child, Jasmine, under MCL 712A.2(b)(1). After stating its factual findings made pursuant to the stipulated record, the court, citing *In re Middleton*, 198 Mich App 197; 497 NW2d 214 (1993), noted that a probate determination that a person is totally without capacity to care for himself or herself creates a rebuttable presumption that the individual's newborn child is at substantial risk of harm to his or her mental well-being and is without proper custody or guardianship. The trial court, while recognizing that *Middleton* entailed a different threshold of incapacity than the instant jurisdictional proceeding,¹ nonetheless concluded that the rebuttable presumption set forth in *Middleton* was applicable to the present circumstances. Respondent now contends that the trial court's reliance on *Middleton* is misplaced. We disagree.

We first note that the central issue raised in *In re Middleton* is exactly the same as that raised in the present case, namely, the court's jurisdiction over a child under MCL 712A.2. *In re Middleton, supra* at 198. Moreover, we conclude, as the trial court reasoned, that if a rebuttable presumption of risk to an infant's mental well-being arises when the caregiver is found to lack the capacity to care for himself or herself, it is equally reasonable for the same presumption to arise when an infant's caregiver has been found to pose a serious risk to her own or someone else's physical safety. Thus, we conclude that the trial court did not clearly err in finding that a rebuttable presumption existed in this case.

In any event, we note that no presumption at all was required in order for the court to find that Jasmine was within the court's jurisdiction. Substantial evidence was presented and was duly noted by the court in its factual findings that Jasmine was subject to a substantial risk of

¹ In *Middleton, supra* at 200, this Court held that because the developmentally disabled respondent mother had been shown by clear and convincing evidence to be "totally without capacity to care for . . . herself" according to the statute pertaining to appointment of a plenary guardian, MCL 330.1618(5), her status gave rise to a rebuttable presumption that her newborn daughter was at "substantial risk of harm to . . . her mental well-being" and "[was] without proper custody or guardianship," MCL 712A.2(b)(1).

harm to her mental well-being. MCL 712A.2. Respondent was diagnosed with an acute psychotic disorder and schizoaffective disorder. At the time of Jasmine's birth, respondent was under an involuntary commitment order: the probate court found by clear and convincing evidence that respondent could reasonably be expected within the near future to intentionally or unintentionally seriously physically injure herself or others and had previously engaged in an act or acts or made significant threats that were substantially supportive of that expectation. In August 2001 respondent was involuntarily hospitalized due to suicidal and homicidal threats, physical altercations at the homeless shelter where respondent was then staying, and failure to comply with her treatment order. A maternal and infant support services report dated April 8, 2002, indicated that respondent's ability to care for herself was marginal and suggested that respondent's parenting skills would be very limited without in-home assistance. The report further suggested that respondent posed a risk to any infant placed in her care.

Moreover, case notes of Community Mental Health Services from May 2002 indicated that respondent was entering apartments without permission, begging people for food and money, threatening her neighbors, and telling neighbors about her sex life. As a result, respondent was threatened with eviction. Further, while still hospitalized shortly after Jasmine's birth, respondent slept through two episodes of Jasmine crying and was unaware that others came and gave the child the assistance that she needed.

In light of this evidence, we conclude that the court did not clearly err in finding that Jasmine was at substantial risk of harm to her mental well-being and thus was within the court's jurisdiction pursuant to MCR 712A.2(b)(1). Even assuming *arguendo* that the trial court's reference to a rebuttable presumption was clearly erroneous, this Court will not reverse a lower court's ruling when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).

Affirmed.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Pat M. Donofrio